



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 29, 2011

Mr. R. Brooks Moore  
Managing Counsel - Governance  
The Texas A&M University System  
200 Technology Way, Suite 2079  
College Station, Texas 77845

OR2011-10916

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 425575 (SO-11-059).

The Texas A&M University System (the "university") received a request for "all Texas A&M AgriLife documents detailing [the university's] agreement to license [the] TAM 112 variety of wheat seed to Andy Watley and/or Watley Seed Company." You claim the submitted documents related to the specified license agreement are excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, not interests of private parties submitting information to government). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates that public disclosure of the information will allow competitors to undercut future bids, and the

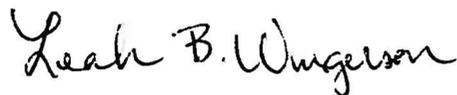
governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (1982) (suggesting such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

The submitted information consists of documents related to and detailing the specified executed license agreement for TAM 112, a wheat variety previously developed by the university; thus, this information does not pertain to a currently competitive bidding situation. However, you state the university recently issued a request for licensing proposals related to TAM 113, a new wheat variety developed by the university, and a license for TAM 113 is currently being negotiated with a prospective licensee. You inform this office the submitted documents related to the TAM 112 executed agreement pertain to a wheat variety that is similar to the newly developed TAM 113 wheat variety. You argue releasing the documents related to TAM 112 will give a prospective licensee an advantage in competing for and negotiating an agreement for the new TAM 113 wheat variety, thereby harming the university's bargaining position. Based on your representations and our review of the information, we find the university has demonstrated release of the documents related to the TAM 112 license agreement would harm its interest in negotiating a new license agreement for its newly developed TAM 113 wheat variety. Therefore, the university may withhold the submitted information under section 552.104 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 425575

Enc. Submitted documents

c: Requestor  
(w/o enclosures)